

**Iowa Department of Natural Resources
Environmental Protection Commission**

ITEM	7	INFORMATION
TOPIC	Proposed Rule – Amend IAC 567 Chapter 213 “Packaging Heavy Metal Content”	

Attached for the Commission’s information and review is a Notice of Intended Action to amend administrative rule 567—Chapter 213 “Packaging Heavy Metal Content”

The rule amendments include removal from the rules of an out-of-date schedule for reducing concentration levels of Heavy Metals in packaging, and incorporate changes enacted through Senate File 344, 82nd General Assembly, first regular session (2007). These changes restricted the liability of distributors for the distribution of toxic packages without knowledge and substituted civil enforcement proceedings for the former criminal enforcement provisions.

The commission will be requested to approve this Notice of Intended Action at its October meeting.

Thomas Anderson
Environmental Specialist Senior
Environmental Services Division

August 6, 2007

ENVIRONMENTAL PROTECTION COMMISSION [567]

Notice of Intended Action

Pursuant to the authority of Iowa Code sections 455D.19, the Environmental Protection Commission hereby gives Notice of Intended Action to amend Chapter 213, “Packaging Heavy Metal Content”.

The rule amendments include the removal of an out-of-date schedule for reducing concentration levels of Heavy Metals in packaging.

The amendments incorporate changes enacted through Senate File 344, 82nd General Assembly, first regular session (2007). The rule amendments include restricting the liability of distributors for the distribution of toxic packages without knowledge and substituted civil enforcement proceedings for the former criminal enforcement provisions.

Any interested person may make written suggestions or comments on these proposed amendments on or before _____. Such written comments should be directed to Kathleen L. Hennings, Energy & Waste Management Bureau, Iowa Department of Natural Resources, 502 E. 9th St., Des Moines, Iowa 50319-0034; fax (515) 281-8895. Persons wishing to convey their views orally should contact Kathleen L. Hennings at (515) 281-5859.

When submitting comments, the Energy & Waste Management Bureau encourages stakeholders to utilize the following guidelines. These guidelines aid the bureau in accurately understanding and creating a record of your input.

1. Include your mailing address and contact information.
2. Please state if you are submitting comments as an individual, or for a business or organization.
3. Cite the specific rule(s) on which you are commenting.

4. Explain your views as clearly as possible by describing any assumptions, data, or technical information you utilized.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative language that you think would improve the specific rule(s) and explain why.

Also, there will be a public hearing on _____ in conference room ____ of the Wallace State Office Building, 502 East Ninth Street, Des Moines, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the rules.

Any persons who will attend the public hearing and have special requirements such as hearing or mobility impairments should contact the Department of Natural Resources and advise of specific needs.

These rules are intended to implement Iowa Code section 455D.19.

The following amendments are proposed:

Item #1 Amend subrule 213.3 as follows:

"Distributor" means a person who takes title to one or more packages or packaging components purchased for promotional purposes or resale. A person involved solely in delivering or storing packages or packaging components on behalf of third parties is not a distributor.

Item #2 Amend subrule 213.4(3) as follows:

213.4(3) Concentration levels. The sum of the concentration levels of lead, cadmium, mercury, and hexavalent chromium present in a package or packaging component shall not exceed ~~the following~~:

~~a. Effective July 1, 1992, 600 parts per million by weight, or 0.06 percent.~~

~~b. Effective July 1, 1993, 250 parts per million by weight, or 0.025 percent.~~

~~c. Effective July 1, 1994, 100 parts per million by weight, or 0.01 percent.~~ Concentration

levels of lead, cadmium, mercury, and hexavalent chromium shall be determined using American Standard of Testing Materials test methods, as revised, or U.S. Environmental Protection Agency test methods for evaluating solid waste, S-W 846, as revised.

Item #3 Amend subrule 213.5 as follows:

213.5 Certification of compliance ~~By July 1, 1992, a~~ A manufacturer or distributor of packaging or packaging components shall make available to purchasers, to the department, and to the general public upon request, certificates of compliance conforming to the requirements of this rule. Certificates provided shall substantially conform with either or both, as applicable, of the following forms:

REDUCTION OF TOXICS IN PACKAGING LAW CERTIFICATE OF COMPLIANCE

We certify that all packaging and packaging components sold to

(Company Name)

or its subsidiaries in the State of Iowa comply with the requirements of this law, namely that the sum of the incidental concentration levels of lead, mercury, cadmium, and hexavalent chromium present in any package or package component shall not exceed the following:

600 Parts Per Million by weight (Effective July 1, 1992), 250 Parts Per Million by weight, (Effective July 1, 1993), 100 Parts Per Million by weight (Effective July 1, 1994).

We further certify that in cases where the regulated metals are present at levels less than the schedule stated above, the regulated metals were not intentionally added during the manufacturing process.

We further certify that no material used to replace the regulated metals are present in a quantity or manner that creates a hazard as great or greater than the hazard created by the regulated materials.

We will maintain adequate documentation of this certification for inspection upon request.

Company

Name

Address

Certified by: _____

(Name)

(Signature)

(Title)

Date: _____

We certify that all packaging and packaging components sold to

(Company Name)

or its subsidiaries in the State of Iowa are in compliance with the law. However, certain packages or packaging components produced by

(Company Name)

are exempt from this law for one or more of the following reasons:

Package or packaging components were made or delivered before the law was signed into effect:
(List package or packaging component)

Package or packaging component contains heavy metals in order to comply with state or federal health and safety requirements or there is no feasible alternative (i.e., the regulated substance is essential to the production, safe handling, or function of the package's contents):
(List package or packaging component)

Package or packaging component is made from post consumer material:
(List package or packaging component)

Alcoholic beverage bottled prior to effective date:
(List package or packaging component)

We will maintain adequate documentation of this certification for inspection upon request.

Company Name

Address

Certified by:

(Name)

(Title)

(Signature)

(Date)

If the manufacturer or distributor of the package or packaging component reformulates or creates a new package or packaging component, the manufacturer or distributor shall provide an amended or new Certificate of Compliance for the reformulated or new package or packaging component.

Item #4 Amend subrule 213.7(2)

213.7(2) Violation. ~~A manufacturer or distributor who does not comply with the requirements of Iowa Code section 455D.19 is guilty of a simple misdemeanor.~~

a. Violations of this Chapter are subject to the provisions of 455D.22 through 455D.25.

b. Each package or packaging component in violation constitutes the basis of a separate offense for purposes of the calculation of penalties pursuant to 455D.25(2).

These rules are intended to implement Iowa Code section 455D.19.

Date

Richard L. Leopold, Director

Administrative Rule Fiscal Impact Statement

Date: 7/6/07

Agency: Department of Natural Resources IAC Citation: 567—Chapter 213 Agency Contact: Tom Anderson, (515) 281-8623
Summary of the Rule:
<i>Fill in this box if the impact meets these criteria:</i> <input checked="" type="checkbox"/> No Fiscal Impact to the State. <input type="checkbox"/> Fiscal Impact of less than \$100,000 annually or \$500,000 over 5 years. <input type="checkbox"/> Fiscal Impact cannot be determined. Brief Explanation:

<i>Estimated Impact to the State by Fiscal Year</i>		
	<u>Year 1 (FY 08)</u>	<u>Year 2 (FY 09)</u>
Revenue by Each Source:		
GENERAL FUND	N/A	N/A
FEDERAL FUNDS	N/A	N/A
Other (specify)	N/A	N/A
	<hr/>	<hr/>
TOTAL REVENUE	\$0.00	\$0.00
Expenditures:		
GENERAL FUND	N/A	N/A
FEDERAL FUNDS	N/A	N/A
Other	\$	\$
	<hr/>	<hr/>
TOTAL EXPENDITURES		
	\$	\$
NET IMPACT	\$	\$
<p><u>X</u> This rule is required by State law or Federal mandate. <i>Please identify the state or federal law:</i> These new rules are required by State law pursuant to SF 344, 2007.</p> <p><u> </u> Funding has been provided for the rule change. <i>Please identify the amount provided and the funding source:</i></p> <p><u>X</u> Funding has not been provided for the rule. <i>Please explain how the agency will pay for the rule change:</i></p> <p>The Energy and Waste Management Bureau estimates that implementing and enforcing these rules will require no additional FTE.</p>		
<p><i>Fiscal impact to persons affected by the rule:</i> Affected persons impacted by this rule are Manufacturers or Distributors who violate Toxic in Packaging laws in Iowa. The amount of the impact will be determined by the amount of packaging in violation, and the length of time the violation has occurred. The rules limit potential liability for distributors.</p>		
<p><i>Fiscal impact to Counties or other Local Governments (required by Iowa Code 25B.6):</i> The cost to local governments will be none.</p>		
<p>* If additional explanation is needed, please attach extra pages.</p>		
<p>Agency Representative preparing estimate: Tom Anderson, (515) 281-8623</p>		